

(16,750.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 212.

THIRD STREET AND SUBURBAN RAILWAY COMPANY
APPELLANT,

vs.

MEYER LEWIS.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

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1 In the Circuit Court of the United States, Ninth Circuit,
District of Washington, Northern Division.

MEYER LEWIS, Plaintiff,

vs.

WESTERN MILL COMPANY, a Body Corporate under the
Laws of Washington; D. T. Denny, John Leary, John
Keenen, R. R. Lombard, J. W. Edwards, James Frank-
land, Malcolm McDonald, James Oldfield, William
Cochrane, David T. Denny, Manson F. Backus, Re-
ceiver of the Ranier Power & Railway Company, a
Corporation Organized and Existing under the Laws
of Washington; Union Trust Company of New York,
a Corporation Organized and Existing under the Laws
of the State of New York; The City of Seattle, a
Municipal Corporation Organized and Existing under
the Laws of the State of Washington; Charles H.
Baker, Doing Business as Charles H. Baker & Com-
pany; A. P. Fuller; National Bank of Commerce of
Providence, a Corporation Organized and Existing
under the Act of Congress Known as the National
Bank Act and the Acts Mandatory and Supplementary
There to; Merchants' National Bank, a Corporation;
Seattle Hardware Company, a Corporation; Commer-
cial National Bank of Seattle, Nelson W. Parker,
W. Hammond Wright; C. M. Sheafe, Receiver of the
Washington Savings Bank; Third Street & Suburban
Railway Company, a Corporation, and Thomas Boyd,
Defendants.

No. 466.

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Præcipe for Transcript.

To the clerk of the above court :

You will please prepare a record in the above-entitled cause to be
transmitted to the United States circuit court of appeals at San
Francisco, and include therein copies of the following from the files
of said cause, to wit :

Supplemental bill, amended answer, demurrer to amended answer,
order sustaining demurrer to amended answer, cost bill, decree,
notice of appeal, assignment of error, citation with proof of service,
supersedeas, waiver of joinder on appeal, cost of record, and by
whom paid, and præcipe for transcript.

BAUSMAN, KELLEHER & EMORY,

Solicitors for Appellant Third Street &

Suburban Railway Company.

3 In the Circuit Court of the United States, District of Washington, Northern Division.

MEYER LEWIS, Plaintiff,

vs.

WESTERN MILL COMPANY, a Body Corporate under the Laws of Washington; D. T. Denny, John Leary, John Keenen, R. R. Lombard, J. W. Edwards, James Frankland, Malcolm McDonald, James Oldfield, William Cochrane, Manson F. Backus, Receiver of the Ranier Power & Railway Company, a Corporation Duly Organized and Existing under and by Virtue of the Laws of the State of Washington; Union Trust Company of New York, a Corporation Organized and Existing under the Laws of the State of New York; City of Seattle, a Municipal Corporation Organized and Existing under the Laws of Washington; Charles H. Baker, Doing Business as Charles H. Baker & Company; A. P. Fuller; National Bank of Commerce of Providence, a Corporation Organized and Existing under the Act of Congress Known as the National Bank Act and the Acts Mandatory and Supplementary Thereto; Merchants' National Bank, a Corporation; Seattle Hardware Company, a Corporation; Commercial National Bank of Seattle, Nelson W. Parker, W. Hammond Wright; C. M. Sheafe, Receiver of the Washington Savings Bank; Third Street & Suburban Railway Company, a Corporation, and Thomas Boyd, Defendants.

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Supplemental Bill of Complaint.

To the judges of the circuit court of the United States, district of Washington:

Meyer Lewis, a citizen of the city and county of San Francisco in the State of California, with leave of court first had and obtained brings this, his supplemental bill, against The Third Street & Suburban Railway Company, a corporation duly organized and existing under the laws of the State of Washington, defendant, with its principal place of business in the city of Seattle, in said State; the original bill herein being brought by this plaintiff against Western Mill Company, a corporation organized and existing under the laws of the State of Washington, with its principal place of business in Seattle, in said State, John Leary and J. W. Edwards, citizens of Washington and residents of Seattle, James Oldfield, citizen of Washington and a resident of Seattle, Malcolm McDonald, a citizen of Washington and a resident of Port Blakely, in said State, The City of Seattle, a municipal corporation duly organized and existing under the laws of the State of Washington, Washington Savings Bank, a corporation duly organized and existing under the laws of Washington, with its principal place of business in Seattle, in said State, and other defendants, against whom decrees *pro confesso* have been entered in the above-entitled cause prior to the bringing of this supplemental bill.

And your orator complains and says:

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I.

That at all times hereinafter mentioned the defendant, Third Street & Suburban Railway Company, was and it now is a corporation, duly organized and existing under and by virtue of the laws of the State of Washington, with its principal place of business in the city of Seattle, in said State.

II.

That on the 14th day of May, 1884, at Seattle, in the then Territory (now State) of Washington, the defendant, The Western Mill Company, with the defendants, D. T. Denny, John Leary, John Keenen, R. R. Lombard, J. W. Edwards, James Frankland, Malcolm McDonald, and James Oldfield, as sureties, duly made and delivered to this plaintiff their promissory note, bearing date on that date, and substantially in the words and figures following, to wit:

"\$20,000.00.

"SEATTLE, WASHINGTON TERRITORY, May 14th, 1884.

"Three years after date the Western Mill Company, a body corporate under the laws of Washington Territory, and D. T. Denny, John Keenen, John Leary, J. Oldfield, R. R. Lombard, Malcolm McDonald, James Frankland, and J. W. Edwards, for value received, jointly and severally promise to pay to the order of Meyer
6 Lewis, at San Francisco, California, the sum of twenty thousand dollars in United States gold coin, with interest at the rate of nine per cent. per annum from date until paid, the interest payable monthly at the Puget Sound national bank, at Seattle.

"In witness whereof, the said Western Mill Company, has caused this promissory note to be subscribed by its president and secretary and its corporate seal affixed, and the said promisors above named have subscribed their names and affixed their seals the day above written.

[CORPORATE SEAL.] "D. T. DENNY,

President of the Western Mill Company.

FRANK HANFORD,

Secretary of the Western Mill Company.

D. T. DENNY,

JOHN LEARY,

JOHN KEENEN,

R. R. LOMBARD,

J. W. EDWARDS,

JAMES FRANKLAND,

MALCOLM McDONALD,

JAMES OLDFIELD, Sureties."

[SEAL.]
[SEAL.]
[SEAL.]
[SEAL.]
[SEAL.]
[SEAL.]
[SEAL.]

III.

That the said defendant, Western Mill Company, to secure the payment of the said principal sum and the interest thereon, and attorney's fees, as mentioned in said note, according to the tenor thereof, did duly execute under its hand and seal

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and deliver to the said plaintiff, a certain mortgage bearing date the 14th day of May, A. D. 1884, and conditioned for the payment of the said sum of twenty thousand dollars, and interest thereon at the rate of and at the time and in the manner specified in said note, and according to the conditions thereof, which said mortgage was duly acknowledged and certified so as to entitle the same to be recorded, and the same was afterwards, to wit, on the 15th of May, 1884, duly recorded in the auditor's office of King county, Territory (now State) of Washington, in volume II of Mortgages, page 710, records of King county, W. T., and which said mortgage conveyed and mortgaged to plaintiff all said premises and real estate in King county, Territory (now State) of Washington, described as follows: The west half of block numbered ninety-four (94), and lots numbered three (3), four (4), five (5), six (6), in block numbered one hundred and four (104) in D. T. Denny's First addition to North Seattle, and block A in D. T. Denny's Sixth *First* addition to North Seattle, together with all and singular the buildings and improvements thereon, and all the privileges and appurtenances thereunto belonging or in anywise appertaining.

IV.

That the interest on said principal sum mentioned in said promissory note and in said mortgage has been paid down to the 14th day of December, 1893, but nothing more has been paid thereon; and the principal sum mentioned in said note and mortgage, 8 together with interest thereon at the rate of nine per cent. per annum from the 14th day of December, 1893, has not been paid by said defendant nor any one else.

V.

That said defendant promised and agreed in said mortgage that if suit should be brought to foreclose the same, mortgagee, or his assigns, may tax and include in the sum decreed to be due thereon five per cent. of the sum so due as attorney's fees with costs; and one thousand and forty dollars is five per cent. of the sum so due on said mortgage, and is a reasonable attorney's fee to be decreed plaintiff herein for foreclosing said mortgage.

VI.

That plaintiff is now the lawful holder and owner of said note and mortgage.

VII.

That no action at law or in equity has ever been commenced upon said promissory note and mortgage except this action.

VIII.

That on or about the 14th day of October, 1891, the defendant, Western Mill Company, mortgagor herein, by its certain deed 9 of sale, sold said mortgaged premises and every part thereof to the Ranier Power and Railway Company, a corporation

organized under the laws of Washington, and having its principal place of business in Seattle; that thereafter, and on or about the 13th day of February, 1895, in the cause of A. P. Fuller *vs.* The Ranier Power & Railway Company, No. —, then pending before this honorable court, Eben Smith, Esq., the duly appointed, qualified and acting master in chancery in said cause, made executed and delivered to A. M. Brookes, Angus McIntosh and Frederick Bausman, purchasers of said premises, at a sale theretofore had, to satisfy a decree in said cause theretofore rendered by this court, a deed of sale to said mortgaged premises and each and every part thereof; that thereafter, on the 12th day of February, 1895, for a valuable consideration, said Angus McIntosh, A. M. Brookes and Frederick Bausman duly bargained and sold by their deed of sale, their right, title and interest in and to said premises, and every part thereof to The Third Street & Suburban Railway Company, defendant herein, who now claims some interest in or lien upon said mortgaged premises through said deed of purchase, so made subsequent to the commencement of plaintiff's action, but that said interest in or lien upon said property is subsequent, subject and inferior to the lien of plaintiff's mortgage.

Wherefore, plaintiff prays judgment against the said Western Mill Company, D. T. Denny, John Leary, John Keenen, R. R. Lombard, J. W. Edwards, James Frankland, Malcolm McDonald and James Oldfield, and each of them, defendants, for the sum of twenty thousand dollars, with interest at the rate of nine per cent. per annum, from said 14th day of December, 1893, and for
10 the further sum of one thousand and forty dollars attorney's fees, and for his costs and disbursements herein.

That the usual decree be made herein for the sale of said mortgaged premises in accordance with the law and the rules of this court, and the proceeds of said sale be applied to the payment of the amount found to be due plaintiff on said note and mortgage.

That said defendant, The Third Street & Suburban Railway Company, a corporation, and all persons claiming through, by, or under it, either as purchasers, incumbrancers or otherwise, may be required to set up their claim or interest in said premises or any part thereof, and that they and each of them may be barred and foreclosed of all right, claim or equity of redemption in said premises, and each and every part thereof, and that plaintiff may have judgment against the said defendants who executed said note, as herein alleged, for any deficiency which may remain after applying all the proceeds of said sale of said premises properly applicable to the satisfaction of said judgment.

That this plaintiff may have such other and further relief against said defendant, The Third Street & Suburban Railway Company, and in the premises as to this court shall seem just and equitable.

CHAS. F. FISHBACK,
MORRIS B. SACHS,

Attorneys for Plaintiff.

11 UNITED STATES OF AMERICA, } ss:
State of Washington, County of King,

Charles F. Fishback, being first duly sworn, on oath deposes and says: That he is one of the attorneys for plaintiff in the above-entitled action, and he makes this affidavit on behalf of plaintiff, because he is not now within the State of Washington; that he has heard the foregoing supplemental bill read, knows the contents thereof, and believes the same to be true; that this action is founded upon a written instrument for the payment of money, which instrument is in possession of this affiant.

CHAS. F. FISHBACK.

Subscribed and sworn to before me this 5th day of October, 1895.

[NOTARIAL SEAL.]

ERNEST S. LYONS,

Notary Public in and for Washington, Residing at Seattle.

(Endorsed :) Copy of within supplemental bill rec'd this Oct. 8, 1895. Bausman, K. & E., att'ys for 3d St. & Sub. R'y Co. Supplemental bill. Filed Oct. 9, 1895. In the U. S. circuit court. A. Reeves Ayres, clerk, by E. A. Colvin, deputy.

12 UNITED STATES OF AMERICA :

Circuit Court of the United States, Ninth Judicial Circuit, District of Washington. In Equity.

Subpœna ad Respondendum.

The President of the United States of America, Greeting, to the Third Street and Suburban Railway Company, a corporation; Malcolm McDonald, James Frankland, R. R. Lombard, and John Keenen :

You are hereby commanded, that you be and appear in said circuit court of the United States aforesaid, at the court-room in Seattle on the 5th day of August, A. D. 1895, to answer an amended bill of complaint exhibited against you and others in said amended bill named, filed in said court by Meyer Lewis, who is a citizen of the State of California, and to do and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty of five thousand dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, this 3rd day of July in the year of our Lord one thousand eight hundred and ninety-five and of our Independence the 119th.

[SEAL.]

A. REEVES AYRES, *Clerk,*

By R. M. HOPKINS,

Deputy Clerk.

13 *Memorandum Pursuant to Rule 12, Supreme Court U. S.*

You are hereby required to enter your appearance in the above suit, on or before the first Monday of August next, at the clerk's office

of said court, pursuant to said bill; otherwise the said bill will be taken *pro confesso*.

A. REEVES AYRES, *Clerk*,
By R. M. HOPKINS,
Deputy Clerk.

UNITED STATES MARSHAL'S OFFICE, }
District of Washington, } ss:

I hereby certify that I received the within writ on the 19th day of July, 1895, and personally served the same on the 20th day of July, 1895, by delivering to and leaving with John Keenen, said defendant named therein personally, at the city of Spokane, county of Spokane, in said district, an attached copy thereof.

JAMES C. DRAKE,
U. S. Marshal,
By SAM. VINSON, *Deputy*.

Spokane, Wash., July 20, '95.

Marshal's Fees.

To serving copy subpoena in equity.....	\$4 00
To one mile travel.....	12
	<hr/>
	\$4 12

14 UNITED STATES MARSHAL'S OFFICE, }
District of Washington. }

I hereby certify that on the 3rd day of July, 1895, I served a true and correct copy of the foregoing and herein attached writ upon W. J. Grambs, sec'y of the Third Street & Suburban Railway Company, by delivering to, and leaving with, the said W. J. Grambs, at the city of Seattle, King county, State of Washington, a true and correct copy thereof. I further certify that on the 6th day of July, 1895, I personally served Malcolm McDonald, at Port Blakely, Kitsap Co., State of Washington, by delivering to, and leaving with, the said Malcolm McDonald a true and correct copy thereof.

JAMES C. DRAKE,
U. S. Marshal,
By G. W. CURTIS,
Deputy U. S. Marshal.

Dated at Seattle, July 22nd, 1895.

Marshal's fees, 12.68.

(Endorsed :) Alias subpoena. Filed July 22, 1895. In the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

- 15 In the Circuit Court of the United States, District of Washington, Northern Division.

MEYER LEWIS, Plaintiff,

vs.

WESTERN MILL COMPANY, a Body Corporate under the Laws of Washington; D. T. Denny, John Leary, John Keenen, R. R. Lombard, J. W. Edwards, James Frankland, Malcolm McDonald, James Oldfield, William Cochrane, Manson F. Backus, Receiver of the Ranier Power & Railway Company, a Corporation Duly Organized and Existing under and by Virtue of the Laws of the State of Washington; Union Trust Company of New York, a Corporation Organized and Existing under the Laws of the State of New York; City of Seattle, a Municipal Corporation Organized and Existing under the Laws of Washington; Charles H. Baker, Doing Business as Charles H. Baker & Company; A. P. Fuller; National Bank of Commerce of Providence, a Corporation Organized and Existing under the Act of Congress Known as the National Bank Act and the Acts Mandatory and Supplementary Thereto; Merchants' National Bank, a Corporation; Seattle Hardware Company, a Corporation; Commercial National Bank of Seattle, Nelson W. Parker, W. Hammond Wright, C. M. Sheafe, Third Street & Suburban Railway Company, a Corporation, Defendants.

- 16 *Amended Answer of Defendant Third Street and Suburban Railway Company.*

The answer of the defendant Third Street & Suburban Railway Company, amended by leave of court, to the supplemental bill of complaint of the above-named complainant.

In answer to the said supplemental bill, the Third Street and Suburban Railway Company says as follows:

I.

Each and all the premises described in the supplemental bill of complaint were owned in fee by the defendant, Western Mill Company, up to the month of April, 1891. In that month the mill company, for a valuable consideration, bargained, sold and conveyed each and all these premises to a corporation organized and existing under the laws of the State of Washington, called the Ranier Power & Railway Company, and that company did immediately thereafter apply the purchased premises to railway uses by devoting them, along with other purposes, to the manufacture of material for the construction of its railway, and erected thereon and till its receivership operated thereon a power-house for its railway. The assets of the Ranier Power & Railway Company did, on the 13th day of June, 1893, pass into the hands of a receiver, defendant Manson F. Backus, in a suit brought in the circuit court of the United States for the district of Washington, in which A. P. Fuller was complainant and The Ranier Power

and Railway Company defendant. That court then had and still has exclusive jurisdiction of the properties of the Ranier Power & Railway Company, and of the cause of Fuller against the Ranier Power & Railway Company, except as it may have been divested of the properties by the receiver's sale hereinafter described, and the cause of Fuller against the railway company is yet undismissed and undetermined. Manson F. Backus, as receiver, did, under order of the court, continue to operate all the properties and the power-house aforesaid of the Ranier Power & Railway Company from the time of his appointment, including the premises described in the supplemental complaint, and did on the 8th day of August, 1894, under due order of the United States court aforesaid, create, issue, and sell for cash receiver's certificates upon all the properties of the Ranier Power & Railway Company in his possession, including the lands specified in the supplemental bill of complaint. These certificates were by the order of the court creating them adjudged to be necessary and essential to the continued existence of the railway company as a corporation of that character, and were made upon petition of the receiver, showing that the operating expenses of the company exceeded its gross receipts, and that unless money were raised by means of these certificates the property would have to be abandoned, and the order of court creating these certificates did establish them as a first lien upon all the property in the receiver's hands, including the lands described in the supplemental bill of complaint.

18 Subsequently the holders of these certificates did petition the court in which they were issued to enforce the lien, and the whole thereof, with interest, no part of the same having been paid, and it was thereupon ordered by the court that all the properties in the possession of the receiver, including those specified in the supplemental bill of complaint, should be exposed to public sale by the receiver. Such sale occurred on the 28th day of January, 1895, to Angus Mackintosh, A. M. Brookes, and Frederick Bausman. This sale was on February 11th, 1895, confirmed. The said Mackintosh, Brookes, and Bausman did on the 12th day of February, 1895, bargain, sell and convey all the aforesaid properties, including the lands specified in the supplemental bill of complaint, unto this defendant, The Third Street & Suburban Railway Company.

II.

This defendant further says that the Ranier Power & Railway Company was, at the time of the conveyance of the mortgaged lands to it by the mill company, a corporation organized with railway powers, and then owned and continued to acquire public franchises for railway purposes, and to operate a railway during the period hereinafter mentioned. Complainant, however, did not then seek to foreclose his mortgage or to collect the debt secured by it, but forbore to do so during more than two years following. During this period the principal of the debt was long overdue, but complainant accepted interest on the loan from the Ranier Power & Railway Company, and even after the passing of that company's

assets into the hands of the receiver Backus he accepted interest from him as such receiver to apply on this mortgage debt, and the whole of said interest was paid up to the 24th day of December, 1893.

III.

The Ranier Power & Railway Company did between the date of its receiving conveyance of the mortgaged lands to the date of the receivership pay taxes upon the mortgaged lands for the years 1891 and 1892 and the insurance thereon. These exceeded the sum of five thousand dollars, and the greater part was expended in an insolvent condition. Receiver Backus, before the complainant's foreclosure was begun, also paid taxes and insurance upon them to the amount of three thousand dollars. During the entire period of its receivership the Ranier Power & Railway Company was utterly insolvent.

IV.

Complainant Meyer Lewis was not a party to the suit in which the receiver's certificates hereinbefore mentioned were issued, but did at all times have notice of the existence of that action and of the receivership, and accepted the payment of interest from the receiver as hereinbefore mentioned with knowledge of the litigation and of all the facts and circumstances hereinbefore recited, and during the space of eleven months forebore to bring action on his mortgage, and during that period suffered the receiver with the trust funds to protect the mortgaged property. About three months before the issuance of the receiver's certificates complainant caused his appearance to be entered in said cause for the purpose of obtaining leave to sue the receiver, but did not ask that he be made a party to the cause or serve notice of his appearance upon any of the parties to it. The sale under the receiver's certificates was known to complainant both before and after its date, but complainant has never sought to disturb it or filed objection thereto.

Wherefore, this defendant prays that it go hence with its costs and disbursements herein, and that the title of this defendant to the premises sought to be foreclosed on by plaintiff be adjudged superior to that of plaintiff's alleged lien, and that as to this defendant and as to all persons claiming under this defendant said lands be adjudged wholly free and discharged thereof.

2nd. That in the event that the lands in controversy be not declared by the court wholly free and discharged of plaintiff's alleged lien, that the court nevertheless deduct from and charge against plaintiff's claim all sums expended by the Ranier Power & Railway Company since its acquisition of those lands from the Western Mill Company and during its insolvency, and also all sums expended thereupon by the receiver of the Ranier Power & Railway Company, and all interest by complainant accepted from that receiver.

3rd. That this defendant have such other and further and general relief as to the court may seem just.

BAUSMAN, KELLEHER & EMORY,
Solicitors for Defendant and of Counsel.

21 (Endorsed :) Amended answer of Third St. & Suburban Railway Company. Filed Nov. 23, 1895. In the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

In the Circuit Court of the United States, District of Washington,
Northern Division.

MEYER LEWIS, Plaintiff,

vs.

THE WESTERN MILL COMPANY, 3RD STREET AND SUB-urban Railway Company, a Corporation, et al., Defendants. } No. 466.

Demurrer of Plaintiff to Amended Answer of Defendant Third Street and Suburban Railway Company.

This plaintiff, Meyer Lewis, by protestation, not confessing or acknowledging all or any of the matters and things in said amended answer of said defendant, 3rd Street & Suburban Railway Company, mentioned to be true in such manner and form as the same are therein set forth and alleged, doth demur to said amended answer, and for causes of demurrer sheweth:

22 That it appeareth by said defendant's own showing in paragraphs 1, 2, 3, and 4 of the alleged defense set forth in said amended answer that the said defendant is not entitled to the relief prayed for in said answer against this plaintiff.

That said alleged defense set forth in said amended answer of said defendant states no fact sufficient to constitute a cause of defense to the supplemental bill complaint of this plaintiff.

Wherefore, and for divers other good causes of demurrer appearing in the said amended answer of said defendant, this plaintiff doth demur thereto. And he prays the judgment of this honorable court whether he shall be compelled to make reply to said answer.

MORRIS B. SACHS AND
CHARLES F. FISHBACK,
Solicitors and Counsel for Plaintiff.

(Endorsed :) Due service hereof admitted and a true copy of the enclosed received this 23 day of November, 1895. Bausman, Kelleher & Emory. Plaintiff's demurrer to amended answer, etc. Filed Nov. 25, 1895. In the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

MEYER LEWIS
vs.
 WESTERN MILL CO. ET AL. } 466.

Order Sustaining Demurrer.

Now, on this day this cause coming on to be heard upon plaintiff's demurrer to the amended answer of Third Street & Suburban R'y Co., the court, after hearing argument of respective counsel, and being sufficiently advised in the premises, sustains said demurrer.

Dec. 5, 1895.

General Order Book, vol. 3, page 510.

24 In the Circuit Court of the United States for the District of Washington, Northern Division.

MEYER LEWIS, Plaintiff,

vs.

WESTERN MILL COMPANY, a Body Corporate under the Laws of Washington; D. T. Denny, John Leary, John Keenen, R. R. Lombard, J. W. Edwards, James Frankland, Malcolm McDonald, James Oldfield, William Cochrane, David T. Denny; Manson F. Backus, Receiver of the Ranier Power & Railway Company, a Corporation Organized and Existing under the Laws of Washington; Union Trust Company of New York, a Corporation Organized and Existing under the Laws of the State of New York; The City of Seattle, a Municipal Corporation Organized and Existing under the Laws of the State of Washington; Charles H. Baker, Doing Business as Charles H. Baker & Company; A. P. Fuller, National Bank of Commerce of Providence, a Corporation Organized and Existing under the Act of Congress Known as the National Bank Act and the Acts mandatory and Supplementary Thereto; Merchants' National Bank, a Corporation; Seattle Hardware Company, a Corporation; Commercial National Bank of Seattle, Nelson W. Parker, W. Hammond Wright; C. M. Sheafe, Receiver of the Washington Savings Bank; Third Street & Suburban Railway Company, a Corporation, and Thomas Boyd, Defendants.

No. 466.

Decree.

This cause coming on duly and regularly for hearing upon plaintiff's motion for a decree herein based upon the findings of fact and conclusions of law heretofore found by the court—

Plaintiff appearing by his attorneys, Charles F. Fishback and Ernest S. Lyons of counsel; defendant City of Seattle appearing by its attorney, W. T. Scott; the defendants John Leary and J. W. Ed-

wards appearing by Messrs. Hardin & Ferry, their attorneys; defendants Malcolm McDonald and James Oldfield appearing by their attorney, D. T. Cross; defendant Washington Savings Bank and C. M. Sheafe, its receiver, appearing by their attorneys, Messrs. Clise & King—and it appearing to the court that a demurrer has been heretofore sustained to the amended answer of the defendant, Third Street & Suburban Railway Company, by order of this court, to which ruling of the court said defendant excepts, and which exception is allowed by this court, and that said defendant, through its attorneys, Messrs. Bausman, Kelleher & Emory, gave notice in open court that said defendant, Third Street & Suburban Railway Company, refused to amend its said answer, or to plead further in said cause, but elected to stand on said answer, and it appearing to the court that the defendants, Charles H. Baker, doing business as Charles H. Baker & Company, William Cochrane, Ranier Power & Railway

26 Company, a corporation, National Bank of Commerce of Providence, Rhode Island, Union Trust Company of New

York, a corporation, and the Commercial National Bank of Seattle, and each of them, has appeared by their attorneys, and filed their appearances in this cause and subsequent thereto, an order was entered in this case taking plaintiff's bill of complaint *pro confesso*, as to each of said defendants, and it further appearing to the court that the defendants John Keenen, N. W. Parker, A. P. Fuller, R. R. Lombard, James Frankland, The Western Mill Company, a corporation, D. T. Denny, Merchants' National Bank of Seattle, a corporation, Seattle Hardware Company, a corporation, W. Hammond Wright, Thomas Boyd and David T. Denny, and each of them have been duly and regularly served with the process and the complaint herein, and they, and each of them, have failed to move, demur, answer, or otherwise appear within the time allowed by law, or at all, and an order has been heretofore entered herein, taking plaintiff's bill of complaint herein *pro confesso*, as to each of said defendants, and the court, having heard and considered the evidence and proofs introduced on behalf of plaintiff and the defendants, James Oldfield, Malcolm McDonald, John Leary, J. W. Edwards, City of Seattle, and the Washington Savings Bank, and being fully advised in the premises, grants said motion:

Wherefore, it is ordered, considered, adjudged, and decreed by the court, that the plaintiff, Meyer Lewis, do have and recover of and from the defendants, Western Mill Company, a corporation, D. T. Denny, John Keenen, R. R. Lombard, James Frankland, Malcolm McDonald, John Leary, J. W. Edwards, and James Oldfield, and

27 from each of them, the sum of twenty thousand (\$20,000) dollars, with interest thereon at the rate of nine per cent. per annum from the 14th day of December, A. D. 1893, to the date hereof, amounting to twenty-four thousand one hundred and thirty dollars (\$24,130), together with an attorneys' fee of ten hundred and forty (\$1,040) dollars, which is a reasonable attorneys' fee to be allowed plaintiff herein, and the costs of this action to be taxed, with interest on the whole of said sums at the rate of nine per cent. per annum from the date hereof until paid.

That said sums, and each of them, are a lien, which is prior to the claim or lien of any of the defendants herein upon the west one-half (W. $\frac{1}{2}$) of block numbered ninety-four (94), except a strip eleven and thirty-six-hundredths (11.36) feet wide on the north side of lot fourteen (14) of said block ninety-four (94), and upon the lots numbered three (3), four (4), five (5), and six (6) in block numbered one hundred and four (104) in D. T. Denny's First addition to North Seattle and block "A" in D. T. Denny's Sixth addition to North Seattle, and on each and every part thereof, together with all and singular the buildings and improvements thereunto belonging, or in anywise appertaining, all of which property is lying and being in King county, Washington.

That said lien be, and the same is, hereby foreclosed.

That the court hereby directs Hon. Eben Smith, master in chancery, to sell said mortgaged premises, and to cause the same to be advertised for sale, once a week, in the "Daily Post-Intelligencer," a paper of general circulation in the city of Seattle, county of King, and State of Washington, and also to cause notices thereof to be posted in three public places in said city of Seattle, county
28 and State aforesaid, before any sale of said property shall take place; said notices to specify the time and place of sale, which shall be held by said master in chancery on said mortgaged premises, at the corner of Bismark and Mercer streets, in the city of Seattle, in the county and State aforesaid, on the date and hour fixed in said notices, after the same has been duly given as herein specified, and the proceeds of such sale be applied to the payment of the costs of such sale and the costs and disbursements of this action, and the several sums due plaintiff on his said note and mortgage, including said attorneys' fee, and by such sale to forever bar and foreclose said defendants, and each and every one of them, and any and all persons claiming by, through or under them, or any of them, from any and all claim, right, title, and interest in and to said premises, and each and every part thereof, save and except the right and claim of the city of Seattle to a strip eleven and thirty-six-hundredths (11.36) wide on the north side of lot fourteen (14) of said block ninety-four (94) of D. T. Denny's First addition to North Seattle, King county, Washington, except the right of redemption allowed by statute.

That plaintiff may become a purchaser at said sale, and upon such sale said master in chancery shall make a deed to said premises to the purchaser thereof, and said purchaser may be let into immediate possession of said described premises, and each and every part thereof.

That if any deficiency remains after the application of the proceeds of said sale to the payment of the several sums hereinbefore mentioned as herein designated, that plaintiff, Meyer Lewis,
29 have judgment and execution against the property of the defendants, Western Mill Company, D. T. Denny, John Keenen, R. R. Lombard, James Frankland, Malcolm McDonald, John Leary, J. W. Edwards, and James Oldfield, and each of them, for the amount of such deficiency.

That the defendants, Malcolm McDonald, John Leary, J. W. Edwards and James Oldfield, be, and they hereby are, decreed to be sureties for the defendant, Western Mill Company, on the note sued upon in this action.

That the claim or lien of the Washington savings bank and of C. M. Sheafe in and to the property on which plaintiff is seeking to foreclose his said mortgage in this action is, and the same hereby is decreed to be subject, subsequent, and inferior to the lien and claim of plaintiff's said mortgage.

That any surplus remaining after the judgment rendered herein, in favor of the plaintiff, including interest, costs, and attorneys' fees, has been paid and satisfied shall be paid to said C. M. Sheafe, receiver of the Washington savings bank, until the amount of his said liens have been fully paid and satisfied.

If any surplus remain after the application of the proceeds derived from the sale of said premises as herein designated, that the same be paid into the registry of this court for the use and benefit of the defendants herein, as their interest may appear.

That the defendant, City of Seattle, be and the same is hereby decreed to be the owner and entitled to the possession of a strip of land eleven and thirty-six-hundredths (11.36) feet wide on the north

30 side of lot fourteen (14) in block ninety-four, in D. T. Denny's First addition to North Seattle, King county, Washington, free from incumbrance or lien of plaintiff's mortgage, or of lien or claim of said defendants, or any of them, or of any and all persons claiming through, by, or under said defendants, or either of them.

Done in open court this 31st day of March, A. D. 1896.

C. H. HANFORD, *Judge.*

To the entry of this decree defendant, Third Street & Suburban Railway Company excepts, which exception is allowed by the court.

O K.

CLISE & KING,
Attorneys for Sheafe, Receiver.

O K.

J. K. BROWN,
Corporation Counsel.

O K.

BAUSMAN, KELLEHER &
EMORY.

O K.

DANIEL T. CROSS,
*Att'y for James Oldfield
and Malcolm McDonald.*

(Endorsed :) Decree. Filed M'ch 31, 1896. In the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

- 31 In the Circuit Court of the United States, District of Washington, Northern Division.

MEYER LEWIS, Plaintiff,
vs.
 WESTERN MILL CO. ET AL., Defendants. } No. 466.

Notice of Taxation of Costs.

Notice to defendant Third Street & Suburban Railway Company and to Messrs. Bausman, Kelleher & Emory, solicitors for said defendant; to defendants John Leary and J. W. Edwards, and to Messrs. Hardin & Ferry, their solicitors, and to defendants Malcolm McDonald and James Oldfield, and to their solicitor, D. T. Cross:

You and each of you will please take notice that the plaintiff in the above-entitled action will, on Saturday, the 4th day of April, A. D. 1896, at the hour of 10 a. m., or as soon thereafter as counsel can be heard, move the clerk of the above-entitled court to tax his costs and expenses herein in accordance with the plaintiff's bill of costs hereto annexed and the records of said court in this cause.

MORRIS B. SACHS AND
 CHARLES F. FISHBACK,
Solicitors for Plaintiff.

- 32 In the Circuit Court of the United States for the District of Washington, Northern Division.

MEYER LEWIS, Plaintiff,
vs.
 WESTERN MILL CO. ET AL., Defendants. } No. 466.

Memorandum of Costs.

Western Mill Co. *et al.* to Meyer Lewis, Dr.

To fees of printer for publishing summons herein \$15 60

To fees, clerk of superior court:

Filing complaint.....	\$4 00	
Transcript of record	2 25	
Sheriff's fees, superior court, for serving process herein	11 40	
		17 65
Total	\$33 25	

UNITED STATES OF AMERICA, }
State of Washington, County of King, } ss:

- Ernest S. Lyons, being first duly sworn, upon his oath deposes and says: that he is one of the attorneys for plaintiff herein;
 33 that as such he is familiar with plaintiff's costs and expenses in this action, and that the above statement is true and cor-

rect, and each item thereof was necessarily incurred by plaintiff in the prosecution of the above action.

ERNEST S. LYONS.

Subscribed and sworn to before me this the 1st day of April, 1896.

[NOTARIAL SEAL.]

FRED H. PETERSON,
*Notary Public in and for the State of
Washington, Residing at Seattle.*

(Endorsed :) Due service hereof admitted and a true copy of the enclosed received this 1st day of April, A. D. 1896. Bausman, Kelleher & Emory, solicitors for 3rd Street & Suburban Railway Company. Hardin & Ferry, solicitors for Leary & Edwards. Daniel T. Cross, solicitor for Oldfield & McDonald. Notice. Cost bill. Filed Apr. 3, 1896. In the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

34 In the Circuit Court of the United States for the District of Washington, Northern Division.

MEYER LEWIS, Plaintiff,

vs.

WESTERN MILL COMPANY, a Body Corporate under the Laws of Washington; D. T. Denny, John Leary, John Keenen, R. R. Lombard, J. W. Edwards, James Frankland, Malcolm McDonald, James Oldfield, William Cochrane, David T. Denny; Manson F. Backus, Receiver of the Ranier Power & Railway Company, a Corporation Organized and Existing under the Laws of Washington; Union Trust Company of New York, a Corporation Organized and Existing under the Laws of the State of New York; The City of Seattle, a Municipal Corporation Organized and Existing under the Laws of the State of Washington; Charles H. Baker, Doing Business as Charles H. Baker & Company; A. P. Fuller; National Bank of Commerce of Providence, a Corporation Organized and Existing under the Act of Congress Known as the National Bank Act and the Acts Mandatory and Supplementary Thereto; Merchants' National Bank, a Corporation; Seattle Hardware Company, a Corporation; Commercial National Bank of Seattle, Nelson W. Parker, W. Hammond Wright; C. M. Sheafe, Receiver of the Washington Savings Bank; Third Street & Suburban Railway Company, a Corporation, and Thomas Boyd, Defendants.

35

Petition for Appeal.

The above-named defendant, Third Street & Suburban Railway Company, conceiving itself aggrieved by the decree entered on the 31st day of March, 1896, in the above-entitled cause, does hereby appeal from said decree to the United States circuit court of appeals for the ninth circuit, and prays that this, its appeal, may be allowed, and that

a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States circuit court of appeals for the ninth circuit.

BAUSMAN, KELLEHER & EMORY,
Solicitors for the Defendant Third Street & Suburban
Railway Company.

Dated April 8, 1896.

And now, to wit, on the 8th day of April, 1896, it is ordered that an appeal be allowed as prayed for.

C. H. HANFORD, Judge.

(Endorsed:) Appeal. Filed Apr. 14, 1896. In the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

36 In the Circuit Court of the United States for the District of Washington, Northern Division.

MEYER LEWIS, Plaintiff,

vs.

WESTERN MILL COMPANY, a Body Corporate under the Laws of Washington; D. T. Denny, John Leary, John Keenen, R. R. Lombard, J. W. Edwards, James Frankland, Malcolm McDonald, James Oldfield, William Cochrane, David T. Denny, Manson F. Backus, Receiver of the Ranier Power & Railway Company, a Corporation Organized and Existing under the Laws of Washington; Union Trust Company of New York, a Corporation Organized and Existing under the Laws of the State of New York; The City of Seattle, a Municipal Corporation Organized and Existing under the Laws of the State of Washington; Charles H. Baker, Doing Business as Charles H. Baker & Company; A. P. Fuller; National Bank of Commerce of Providence, a Corporation Organized and Existing under the Act of Congress Known as the National Bank Act and the Acts Mandatory and Supplementary Thereto; Merchants' National Bank, a Corporation; Seattle Hardware Company, a Corporation; Commercial National Bank of Seattle, Nelson W. Parker, W. Hammond Wright; C. M. Sheafe, Receiver of the Washington Savings Bank; Third Street & Suburban Railway Company, a Corporation, and Thomas Boyd, Defendants.

No. 400.

37

Assignment of Errors.

Comes now the above-named defendant, Third Street & Suburban Railway Company, and says, that in the records and proceedings

in the above-entitled cause, and in the judgment rendered therein upon the 31st day of March, 1896, there is manifest error in this, to wit:

1st. In sustaining the demurrer of plaintiff to the amended answer of this defendant to the supplementary bill of plaintiff.

2nd. In entering a decree against this defendant in favor of plaintiff.

Wherefore, Third Street & Suburban Railway Company, defendant, prays that this, its assignment of errors, be entered upon the record of this cause, and it further prays that upon the hearing of this appeal it be adjudged by the United States circuit court of appeals for the ninth circuit, if the said court shall entertain jurisdiction hereof upon its merits, that the said decree be in all things reversed, and that this defendant be granted the relief prayed for in its amended answer.

Dated April 8th, 1896.

THIRD STREET & SUBURBAN RAILWAY
COMPANY,
By BAUSMAN, KELLEHER & EMORY,
Its Solicitors.

(Endorsed:) Assignment of errors. Filed Apr. 14, 1896. In the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

38 In the Circuit Court of the United States for the District of Washington, Northern Division.

MEYER LEWIS, Plaintiff,

vs.

WESTERN MILL COMPANY, a Body Corporate under the Laws of Washington; D. T. Denney, John Leary, John Keenen, R. R. Lombard, J. W. Edwards, James Frankland, Malcolm McDonald, James Oldfield, William Cochrane, David T. Denny, Manson F. Backus, Receiver of the Ranier Power & Railway Company, a Corporation Organized and Existing under the Laws of Washington; Union Trust Company of New York, a Corporation Organized and Existing under the Laws of the State of New York; The City of Seattle, a Municipal Corporation Organized and Existing under the Laws of the State of Washington; Charles H. Baker, Doing Business as Charles H. Baker & Company; A. P. Fuller; National Bank of Commerce of Providence, a Corporation Organized and Existing under the Act of Congress Known as the National Bank Act and the Acts Mandatory and Supplementary Thereto; Merchants' National Bank, a Corporation; Seattle Hardware Company, a Corporation; Commercial National Bank of Seattle, Nelson W. Parker, W. Hammond Wright; C. M. Sheafe, Receiver of the Washington Savings Bank; Third Street & Suburban Railway Company, a Corporation, and Thomas Boyd, Defendants.

No. 400.

39

Supersedeas Bond.

Know all men by these presents: That we, The Third Street & Suburban Railway Company as principal, and A. M. Brookes, of the county of King and State of Washington, as surety for the above-named Third Street & Suburban Railway Company are jointly and severally held and firmly bound unto Meyer Lewis, the above-named plaintiff, in the penal sum of two thousand dollars (\$2,000.00) to him to be paid, the said Meyer Lewis, for the payment of which jointly and severally we bind ourselves by these presents.

Witness our hands this 7th day of April, 1896.

The condition of this obligation is such that, whereas the above-named Third Street & Suburban Railway Company has prosecuted an appeal to the United States circuit court of appeals for the ninth circuit in the above-entitled cause:

Therefore, if the said Third Street & Suburban Railway Company, appellant, shall prosecute its said appeal to effect and answer all damages and costs, if it shall fail so to do, then this obligation shall be void; otherwise, to remain in full force and virtue.

THIRD STREET AND SUBURBAN RAILWAY COMPANY,

[CORPORATE SEAL.] By W. J. GRAMBS, Sec'y.
A. M. BROOKES.

Approved this 8th day of April, 1896.

[SEAL.]

C. H. HANFORD,
District Judge.

40 DISTRICT OF WASHINGTON, } ss:
State of Washington, County of King, }

Personally appearing before me, the undersigned, a notary public in and for the State of Washington, A. M. Brookes, to me personally known to be the surety named in the above bond, who, being first duly sworn, deposes and states that he is a resident and freeholder within this district and worth the sum of two thousand dollars (\$2,000.00) over and above all debts and liabilities, and exclusive of property exempt from execution.

Witness my hand and official seal this 7th day of April, 1896.

[NOTARIAL SEAL.]

DANIEL KELLEHER,

Notary Public in and for the State of Washington,
Residing at Seattle.

(Endorsed :) Supersedeas bond. Filed Apr. 14, 1896. In the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

41 In the Circuit Court of the United States for the District of Washington, Northern Division.

MEYER LEWIS, Plaintiff,

vs.

WESTERN MILL CO. ET AL., Defendants.

} No. 466.

Exceptions to Bond on Appeal.

Comes now plaintiff and hereby excepts to the sufficiency of the bond given by the defendant, Third Street & Suburban Railway Company, upon appeal herein, on the following grounds, to wit:

1. That said bond is conditioned in a sum less than double the amount involved herein.

2. That said bond is conditioned in a sum insufficient to cover damages and costs to plaintiff pending an appeal herein.

3. That said bond is improperly executed, and has but one surety.

4. That said bond was signed and filed without the knowledge of plaintiff or either of his solicitors herein.

42 5. That no notice of the time and place of the examination of the sureties, or of any surety proposed, was given to plaintiff, or either of his solicitors, as is required by law and the rules of this court.

6. That said bond was presented to this court for approval without the knowledge of plaintiff, or either of his counsel herein.

7. That said bond is irregular upon its face and insufficient, and does not comply with the law and the practice of this court governing the giving of bonds on appeal in such case made and provided,

and plaintiff moves the court for an order setting aside the order approving said alleged bond heretofore made herein, and to require said defendant to furnish a good and sufficient bond in double the amount involved, with two sureties thereon to be approved by this court.

MORRIS B. SACHS AND
CHARLES F. FISHBACK,
Solicitors for Plaintiff.

(Endorsed:) Exceptions to appeal bond. Due service hereof admitted and a true copy of the enclosed received this 18th day of April, 1896. Bausman, Kelleher & Emory, attorneys for d'f't 3rd St. & Sub. R'y Co. Filed Apr. 18, 1896. In the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

43 nI the Circuit Court of the United States for the District of Washington, Northern Division.

MEYER LEWIS, Plaintiff,

vs.

WESTERN MILL COMPANY, a Body Corporate under the Laws of Washington; D. T. Denny, John Leary, John Keenen, R. R. Lombard, J. W. Edwards, James Frankland, Malcolm McDonald, James Oldfield, William Cochrane, David T. Denny, Manson F. Backus, Receiver of the Ranier Power & Railway Company, a Corporation Organized and Existing under the Laws of Washington; Union Trust Company of New York, a Corporation Organized and Existing under the Laws of the State of New York; The City of Seattle, a Municipal Corporation Organized and Existing under the Laws of the State of Washington; Charles H. Baker, Doing Business as Charles H. Baker & Company; A. P. Fuller; National Bank of Commerce of Providence, a Corporation Organized and Existing under the Act of Congress Known as the National Bank Act and the Acts Mandatory and Supplementary Thereto; Merchants' National Bank, a Corporation; Seattle Hardware Company, a Corporation; Commercial National Bank of Seattle, Nelson W. Parker, W. Hammond Wright; C. M. Sheafe, Receiver of the Washington Savings Bank; Third Street & Suburban Railway Company, a Corporation, and Thomas Boyd, Defendants.

No. 466.

44

Consent to Appeal without Joinder.

STATE AND DISTRICT OF WASHINGTON, }
County of King, } ss:

We, the undersigned, solicitors of record in the above-entitled cause for the defendants respectively named below, do con-

sent that defendants, Third Street & Suburban Railway Company, appeal to the circuit court of appeals of the United States, for the ninth circuit, from the decree rendered in this cause on the 31st day of March, 1896, without joinder of each or all of us in said appeal, and we do waive further notice thereof, and authorize the judge or court to allow an appeal to be taken separately by the Third Street & Suburban Railway Company.

Dated April 7th, 1896.

UNION TRUST COMPANY OF NEW
YORK,
By BAUSMAN, KELLEHER & EMORY,
Its Solicitors.

NATIONAL BANK OF COMMERCE
OF PROVIDENCE,
By BAUSMAN, KELLEHER & EMORY,
Its Solicitors.

MANSON F. BACKUS,
As Receiver of the Ranier Power & Railway Company,
By LICHTENBERG, SHEPARD & LYON.
CHARLES H. BAKER,
Doing Business as Charles H. Baker & Company,
By STRATTON, LEWIS & GILMAN,
His Solicitors.

WILLIAM COCHRANE,
By STRATTON, LEWIS & GILMAN,
His Solicitors.

WASHINGTON SAVINGS BANK AND
C. M. SHEAFE, *Its Receiver,*
By CLISE & KING, *Their Solicitors.*
MALCOLM McDONALD AND
JAMES OLDFIELD,
By DANIEL T. CROSS, *Their Solicitors.*
CITY OF SEATTLE,
By W. T. SCOTT,
JOHN K. BROWN, *Its Solicitors.*
JOHN LEARY AND
J. W. EDWARDS,
By HARDIN & FERRY, *Their Solicitors.*
COMMERCIAL NATIONAL BANK OF
SEATTLE,
By L. H. WHEELER, *Its Solicitors.*

(Endorsed :) Waiver of joinder in appeal. Filed Apr. 14, 1896.
In the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

UNITED STATES OF AMERICA, }
District of Washington, } ss :

Clerk's Certificate to Transcript.

In the Circuit Court of the United States for the District of Washington, Northern Division.

46 I, A. Reeves Ayres, clerk of the circuit court of the United States for the district of Washington, do hereby certify that the foregoing thirty-four (34) typewritten pages, numbered from 1 to 34, inclusive, contain in themselves, and not by reference, a complete record and transcript of the final record, and of all the papers, exhibits and depositions and other proceedings which are necessary to the hearing of the appeal of the Third Street & Suburban Railway Company, in a case numbered 466 in this court, wherein Meyer Lewis is complainant, and The Western Mill Company and others, including said railway company, are defendants. And I do further certify that the waiver of joinder in appeal, dated April 7th, 1896, among the within writings, contains the signatures of the solicitors of all the defendants, who have at any time appeared in this action. And I further certify that the cost of preparing and certifying the foregoing transcript is the sum of nineteen dollars and forty-five cents (\$19.45), and that the said sum has been paid to me by the appellant, The Third Street & Suburban Railway Company. No opinion has been given or filed in said cause.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said circuit court, at my office, in the city of Seattle, in said district, this 30th day of April, 1896.

[SEAL.]

A. REEVES AYRES,
*Clerk of the Circuit Court of the United States
for the District of Washington,*
By R. M. HOPKINS, *Deputy Clerk.*

47 In the Circuit Court of the United States for the District of Washington, Northern Division.

MEYER LEWIS, Plaintiff,

vs.

WESTERN MILL COMPANY, a Body Corporate under the Laws of Washington; D. T. Denny, John Leary, John Keenen, R. R. Lombard, J. W. Edwards, James Frankland, Malcolm McDonald, James Oldfield, William Cochrane, David T. Denny, Manson F. Backus, Receiver of the Ranier Power & Railway Company, a Corporation Organized and Existing under the Laws of Washington; Union Trust Company of New York, a Corporation Organized and Existing under the Laws of the State of New York; The City of Seattle, a Municipal Corporation Organized and Existing under the Laws of the State of Washington; Charles H. Baker, Doing Business as Charles H. Baker & Company; A. P. Fuller; National Bank of Commerce of Providence, a Corporation Organized and Existing under the Act of Congress Known as the National Bank Act and the Acts Mandatory and Supplementary Thereto; Merchants' National Bank, a Corporation; Seattle Hardware Company, a Corporation; Commercial National Bank of Seattle, Nelson W. Parker, W. Hammond Wright; C. M. Sheafe, Receiver of the Washington Savings Bank; Third Street & Suburban Railway Company, a Corporation, and Thomas Boyd, Defendants.

No. 400.

48

Citation on Appeal.

UNITED STATES OF AMERICA, ss:

To Meyer Lewis, Greeting:

You are hereby cited and admonished to be and appear at a term of the circuit court of appeals of the United States, for the ninth circuit, to be holden at San Francisco, in the State of California, within thirty days from the date of this citation, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Washington, wherein Third Street & Suburban Railway Company is appellant, and Meyer Lewis is respondent, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 8th day of April, in the year of our Lord one thousand eight hundred and ninety-six.

[SEAL.]

C. H. HANFORD, Judge.

STATE AND DISTRICT OF WASHINGTON, } ss:
County of King,

I, the undersigned solicitor of record for Meyer Lewis, the plaintiff herein and appellee, acknowledge service of a copy of the foregoing citation upon me this 14th day of April, 1896.

MORRIS B. SACHS AND
 CHARLES F. FISHBACK,

Solicitors for Meyer Lewis, Plaintiff and Appellee.

49 I hereby certify that I served the foregoing citation upon E. S. Lyons, solicitor of record for complainant herein, at Seattle, Wash., on the 15th day of April, 1896, by delivering to him a true copy of this writ.

Dated at Seattle the 15th day of April, 1896.

JAMES C. DRAKE,

U. S. Marshal,

By GEO. W. CURTIS, *Deputy.*

(Endorsed:) Citation on appeal. Filed Apr. 14, 1896. In the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

No. 298. U. S. circuit court of appeals for the ninth circuit. Third Street and Suburban Railway Company, appellant, vs. Meyer Lewis. Transcript of record. Appeal from U. S. circuit court, district of Washington, northern division. Filed May 4th, 1896. F. D. Monekton, clerk.

50 In the Circuit Court of the United States, District of Washington, Northern Division.

MEYER LEWIS, Plaintiff,

vs.

THE WESTERN MILL COMPANY ET AL., Defendants. }

Notice of Lien.

To the plaintiff, Meyer Lewis; to the defendant The Third Street & Suburban Railway Company; to the remaining defendants herein, and to whom it may concern:

You are hereby notified that I, Ernest S. Lyons, as one of plaintiff's solicitors herein, claim an attorney's lien in the sum of two hundred and fifty dollars (\$250.00) on that certain judgment and decree entered in the above cause on the 31st day of March, 1896, in said cause and which decree was in favor of plaintiff and against the above defendants for the sum of twenty-four thousand one hundred and thirty dollars; that said sum of two hundred and fifty dollars is claimed by me as reasonable compensation for professional services rendered to plaintiff in the conduct and management of the above-entitled cause to the date hereof.

ERNEST S. LYONS.

Dated Sept. 15, 1896.

(Endorsed:) Notice of lien. Filed Sept. 28, 1896. F. D. Monckton, clerk U. S. circuit court of appeals, 9th circuit.

51 In the United States Circuit Court of Appeals for the Ninth Circuit.

THE THIRD STREET AND SUBURBAN RAILWAY COMPANY,
Appellant,
vs.
MEYER LEWIS, Appellee. } No. 298.

Appeal from the circuit court of the United States for the district of Washington, northern division.

Frederick Bausman, for the appellant.
Morris B. Sachs for the appellee.

Before Gilbert and Ross, circuit judges, and Hawley, district judge.

GILBERT, *Circuit Judge*:

The appellee was the complainant in a suit brought to foreclose a mortgage on certain real property in the city of Seattle. His supplemental bill alleged in substance that on May 14, 1884, the Western Mill Company, a corporation, executed its promissory note to the complainant in the sum of \$20,000, payable three years after date, with interest at nine per cent. per annum, and to secure the same executed its mortgage on certain lots in the city of Seattle; that the interest on said note and mortgage has been paid to December 14, 1893, but not thereafter; that on October 14, 1891, the mortgagor sold and conveyed the said mortgaged premises to the Ranier Power & Railway Company, a corporation, and that on or about February 13, 1895, in a cause pending in the circuit court of the United States for the district of Washington, in which A. P. Fuller was complainant and The Ranier

52 Power & Railway Company was defendant, the master in chancery of said court executed and delivered to A. M. Brookes, Angus McIntosh, and Frederick Bausman, who were the purchasers of said lots at a sale had to satisfy the decree rendered in said cause, a deed of sale to said mortgaged premises, and that on February 12, 1895, the said McIntosh, Brookes, and Bausman conveyed the same unto the Third Street & Suburban Railway Company; that the interest of said last-named corporation is subject to the lien of the mortgage. To this bill the Third Street & Suburban Railway Company, the appellant, made answer, alleging that the Ranier Power & Railway Company, immediately after receiving its conveyance of said lots from the mortgagor, applied the said property to railway uses and erected thereon a power-house for its railway; that on June 13, 1893, the assets of said Ranier Power & Railway Company passed into the hands of Manson F. Bacchus, receiver in the suit of Fuller against said company, mentioned in the bill; that said receiver, under the order of the court, operated

the railway properties and power-house, and on August 8, 1894, under the order of the court, issued receiver's certificates upon all the property of said railway company, including the lands described in the bill; that the certificates were by the court adjudged to be necessary and essential to the continued existence of the railroad company and were made upon the petition of the receiver, showing that the operating expenses of the company exceeded its gross receipts, and that unless money were raised by means of these certificates the property would have to be abandoned, and that the order of court made the certificates a first lien upon all property in the receiver's hands, including the mortgaged premises; that

53 subsequently the certificate-holders petitioned the court to enforce the lien, and that thereupon, under the order of the court, all the property in the receiver's hands was sold on January 28, 1895, as alleged in the bill; that the sale was thereafter confirmed, and on February 12, 1895, the purchasers conveyed the same to the Third Street & Suburban Railway Company. The answer further alleges that the Ranier Power & Railway Company was a corporation organized with railway powers and owned public franchises for railway purposes; that the complainant did not seek to foreclose his mortgage at the time of the transfer of the land to said corporation, but forbore to do so for more than two years following, during which period the mortgage was overdue, but that he accepted interest on the loan from said railway company and thereafter accepted interest from the receiver; that the receiver, before the foreclosure suit was begun, paid taxes and insurance upon the lands to the amount of \$3,000; that while the complainant was not a party to the suit in which the receiver's certificates were issued, he had knowledge of that suit and of the receivership and accepted interest from the receiver with knowledge of the litigation and of all the facts alleged in the answer, and during the space of eleven months forbore to foreclose his mortgage, and permitted the receiver with the trust funds to protect the mortgaged property; that about three months before the issuance of the receiver's certificates he caused his appearance to be entered in said cause for the purpose of obtaining leave to sue the receiver, but did not ask to be made a party to the cause nor did he serve notice of his appearance upon any of the parties; that the sale under the receiver's certificates was known to the complainant both before and after its date, but he has not sought to disturb it or filed objection thereto. A demur-
54 rer to the amended answer was sustained by the circuit court, and, the defendant answering no further, a decree of foreclosure was thereupon entered. The order sustaining the demurrer is assigned as error on the appeal to this court.

It is contended by the appellant that by virtue of the facts set forth in its amended answer the complainant's mortgage lien has been extinguished, and that the appellant holds its property under the title acquired at the judicial sale, which was made to satisfy the receiver's certificates, free from all prior incumbrance. It is not contended that the lien of the complainant's mortgage has been adjudged to be second to that of the receiver's certificates upon a hear-

ing had to determine the respective rights and priorities of those incumbrances, nor that the complainant has had his day in court, but it is urged that the actual knowledge which the complainant had of the proceedings of the court, the issuance of the certificates, the adjudication of their necessity and of their priority, is tantamount to legal notice or service of process upon him. To sustain this view of the law, we are referred to the decision of the Supreme Court in *Union Trust Co. v. Illinois Midland R. Co.*, 117 U. S., 434, in which it is said: "A full opportunity, as in this case, to be heard on evidence as to the propriety of the expenditures and of making them a first-class lien is judicially equivalent to prior notice. The receiver and those lending money to him on certificates issued on orders made without prior notice to parties interested take the risk of the final action of the court in regard to the loans. The court always retains control of the matter. Its records are accessible to lenders and subsequent holders, and the certificates are not negotiable instruments." This expression of opinion was uttered in the case

55 of a foreclosure of railroad mortgages in which the court had had occasion to advert to the nature of that class of liens and the necessity for preserving the road as a going concern, together with its franchises, not only for the benefit of the corporations, but as a public highway, and had said that its creditors or the holders of its obligations must necessarily be held to have received the same in view of these peculiar facts and with the understanding that if it fall into insolvency and its affairs come into a court of equity for adjustment, it may become necessary to make repairs or pay the costs of operation, and for that purpose to borrow money upon the credit not only of its earnings, but of its corpus. The court held, it is true, that the certificates of receivers might, in case of urgency, where legal notice was not practicable, be issued under the order of the court for the preservation of the property and the protection of the bondholders, and that in such a case prior notice to incumbrancers or to all the parties interested was not absolutely necessary, but that the question of the priority of such receiver's certificates over the liens of persons to whom notice was not given or who did not consent might be subsequently adjudicated, and that the takers of such receiver's certificates must be expected to receive the same subject to such contingency; but the facts upon which the decision was rendered in that case differ in substantial features from the present case. The complainant here did not lend his money upon railroad security. He loaned it upon lots in a city, which were subsequently sold to a street railway company subject to his lien, and by the latter were used as the site of a power-house. The fact that he failed to foreclose his mortgage immediately on such

56 transfer, or that he received from the railway corporation or from the receiver appointed subsequently in a suit against said corporation the interest which came due upon his mortgage does not in any way change his rights or estop him to enforce his lien as an ordinary mortgage upon real estate. Assuming it to be true that he had actual notice of all the steps taken in the suit in which the receiver's certificates were issued, and that he made no

appearance in said court and no opposition to said proceedings, he is not thereby precluded from proceeding to foreclose his mortgage upon default of the interest on the same. The foreclosure suit was begun some two months before the hearing on the petition for the order to sell the real estate to satisfy the receiver's certificates. The holders to those certificates and the parties to that suit had the opportunity to cause the complainant to intervene in said proceedings and submit to the court the question of the priority of his lien. They declined to do so. They were chargeable with the record notice of his lien from the first, and the complainant, in view of their conduct, might justly assume that it was not their intention to dispute his prior lien or to attempt to create a lien in advance thereof, and that in selling the property, as the same was sold, in a proceeding to which he was not made a defendant, it was the intention to recognize his mortgage and to sell the property subject thereto. In making the expense of operating a railroad a charge upon it in preference to the mortgage liens, courts of equity have acted with extreme caution, and have exercised the extraordinary power only upon the theory that the holder of such a mortgage lien takes the same subject to the implied condition that in case of the insolvency of the railroad company it may become necessary under a receivership

to borrow money for the purpose of preserving its value and protecting its franchises for the benefit of all interested therein. The power has generally been exercised only after notice to all parties to the litigation, and if without such notice or if before the time when the prior lienholders become parties to the suit receiver's certificates are issued by authority of the court, such prior lienholders, when they are subsequently brought before the court, will always be given the opportunity to contest the priority of the receiver's certificates over their liens. In *Mercantile Trust Co. v. Kanawha & Ohio Railway Co.*, 7 C. C. A., 3, it was held that the holder of a receiver's certificate is put upon inquiry as to all that has been done in the litigation in which the certificate was authorized, and that he is charged with notice of all subsequent proceedings therein and of the fact that by the final action of the court the validity of the certificate may be prejudicially affected, and that a final decree in a foreclosure suit against a railway company, vesting the purchasers at the foreclosure sale with a title free from all liens for receiver's debts, operates to set aside so much of a previous order as has made the receiver's certificates a paramount lien on the road; but the mortgagee in this case does not stand in the attitude of the ordinary lender of money upon railroad security. His loan was made upon real estate only, and not in contemplation of its subsequent application to railroad uses. Upon what principle of equity can it be said that his mortgage has become subordinated to the uses for which the property was thereafter devoted, so that it has lost its character of a mortgage upon real estate and has now, by virtue of the insolvency of the railway company, become extinguished by a lien created by a receiver for the purpose of maintaining other property of the company? At the time when

the mortgage loan was made the security presumably was and still is of sufficient value to satisfy the complainant's

lien. For the protection of that lien he has not, so far as the facts are disclosed in the pleadings, required the intervention of a court of equity, nor is it shown that any expense has been incurred by the receiver which was necessary or advantageous to the protection of his security.

The appellant insists that there is ground for the equitable preference of the receiver's certificates over the complainant's lien in the fact that the receiver, before the commencement of this foreclosure suit, paid out of the assets of said railway company for insurance and taxes on the mortgaged property the sum of \$3,000, thereby reducing the assets of the company and in part creating the necessity for the issuance of the certificates. We are unable to see how this contention can be sustained. If the receiver paid taxes and insurance it was in the discharge of his duty and in the course of business and for the purpose of protecting the property as it was and possibly for the purpose of averting a suit by the complainant to foreclose his mortgage. The greater portion of the sum so paid is evidently on account of the improvements placed upon the property by the railway company, and not for taxes upon the lots which were the subject of the complainant's mortgage. If the taxes had remained unpaid they would now be an additional charge upon the real estate, and the complainant in his decree of foreclosure would be entitled to have that amount also paid out of the security. The mortgage contemplated this, and it is not shown that the value of the property is inadequate to meet such increased charge upon it.

In any view of the facts alleged in the amended answer they constitute no defense to the bill, and the demurrer was properly sustained. The decree will be confirmed; with costs to the appellee.

(Endorsed:) Opinion. Filed Feb. 8, 1897. F. D. Monckton, clerk.

60 United States Circuit Court of Appeals for the Ninth Circuit
October Term, 189-.

THIRD STREET & SUBURBAN RAILWAY COMPANY, Ap-	} No. 298.
pellant,	
v.	
MEYER LEWIS, Appellee.	

Appeal from the circuit court of the United States for the district of Washington, northern division.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Washington, northern division, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed, with costs to the appellee.

(Endorsed :) Decree. Filed Feb. 8, 1897. F. D. Monekton clerk.

61 [Endorsed :) No. —. United States circuit court of appeals for the ninth circuit, October term, 189—. Decree. Filed —, 189—. —, clerk.

62 In the Supreme Court of the United States.

THE THIRD STREET & SUBURBAN RAILWAY	}	Petition for Appeal.
Company, Appellant,		
vs.		
MEYER LEWIS, Appellee.		

To the honorable the justices of the Supreme Court of the United States:

The petition of The Third Street & Suburban Railway Company, appellant in the above-entitled cause, respectfully shows:

Appellee Lewis commenced this action in the circuit court of the United States, 9th circuit, for the district of Washington against the Western Mill Company and others, including The Third Street & Suburban Railway Company, now appellant, for foreclosure of a certain mortgage, and the present appellant railway company did, by answer in that foreclosure, set up alleged title superior to the lien of the mortgage, and derained title to itself from certain receiver's certificates issued by the circuit court of the United States for the district of Washington. These receiver's certificates had been issued in a cause in which one Fuller was complainant and The Union Trust Company of New York and others, defendants, and it had been issued by the circuit court aforesaid on a showing made by the receiver in the cause of Fuller against the trust company *et al.* to the effect that such certificates were necessary to the operation and preservation of the railway property then in the hands of that court in that cause. These certificates the said circuit court for the district of Washington did order and establish as a first lien upon all the properties in the hands of the receiver, including the property now sought to

63 be foreclosed upon by appellee, Meyer Lewis. Such proceedings were had in the cause of Fuller against the trust company and others that all the property was subsequently sold to satisfy their lien, including the property now sought to be foreclosed upon. At the sale certain persons became purchasers who conveyed to the present appellant, The Third Street & Suburban Railway Company, said sale having been in all things by the circuit court for the district of Washington confirmed. In the present foreclosure case of Meyer Lewis against The Western Mill Company all the aforesaid was set up as a defense, as will more clearly and at large appear in the certified record herewith presented to your honors. The circuit court for the district of Washington, in which appellee Lewis brought this present foreclosure, adjudged the lien of the mortgage to be superior to that of the receiver's certificates and the title of this appellant, The Third Street & Suburban Rail-

way Company, through them derived, and this decision was by the circuit court of appeals for the 9th circuit affirmed.

II.

Your petitioner conceives himself aggrieved by the decision of the circuit court of the United States for the district of Washington and by that of the United States circuit court of appeals for the 9th circuit, and desires to have the judgment of both of said courts reviewed by appeal from the judgment of the circuit court of appeals for the 9th circuit to the Supreme Court of the United States, and now alleges and shows, as from the certified record will at large and more clearly appear, that the defense relied upon by this appellant, The Third Street & Suburban Railway Company, as hereinbefore narrated, constituted a Federal question and is not within that class of cases in which the decision of the circuit courts of appeals are final, and that the Federal question in this is that the grantors of this appellant, The Third Street & Suburban Railway Company, having purchased at a sale of property under receiver's certificates by a court of the United States, have derived their title under the laws of the United States and claim a right, privilege, and immunity under an authority exercised under the laws of the United States.

Wherefore your petitioner, conceiving itself to be aggrieved and damaged by the judgment of the United States court of appeals for the 9th circuit, and in order to obtain relief therein and have opportunity to show the errors complained of, respectfully prays that an appeal be allowed from the judgment of said United States circuit court of appeals to the Supreme Court of the United States, and that proper orders be made herein touching the security required on appeal, and to otherwise cause to be done what by right should be done in your petitioner's behalf.

FREDERICK BAUSMAN,
Counsel for Petitioner and Appellant.

(Endorsed :) Petition for appeal to Supreme Court U. S. Filed Nov. 19, 1897. F. D. Monckton, clerk.

65 In the Supreme Court of the United States.

THE THIRD STREET & SUBURBAN RAILWAY COMPANY, Appellant, }
vs.
MEYER LEWIS, Appellee. }

Comes now The Third Street & Suburban Railway Company, appellant, and says:

In that certain cause pending in the United States circuit court of appeals for the ninth circuit, in which the above-named railway company is appellant and the above-named Meyer Lewis is appellee, this error, as shown by the records and proceedings, there occurred, to wit:

That the circuit court of appeals for the ninth circuit erred in af-

firming the decree of the circuit court of the United States for the district of Washington in the above-entitled cause, and in causing final judgment to be entered therein against this appellant on the 8th day of February, 1897.

II.

That the United States circuit court of appeals for the ninth circuit erred in sustaining demurrer of the appellee Lewis to the amended answer of the appellant railway company.

FREDERICK BAUSMAN,
Counsel for Appellant.

(Endorsed :) Assignment of errors. Filed Nov. 19, 1897. F. D. Monckton, clerk.

66 In the Supreme Court of the United States.

THE THIRD STREET & SUBURBAN RAILWAY COMPANY, Appellant, }
vs.
MEYER LEWIS, Appellee. }

Order Allowing Appeal.

It appearing to the Honorable Stephen J. Field, one of the justices of the Supreme Court of the United States, by the petition of appellant for an appeal from decree of the United States circuit court of appeals for the 9th district to the Supreme Court of the United States in the cause in which The Third Street & Suburban Railway Company is appellant in the latter court and Meyer Lewis is appellee, and it appearing further by appellant's assignments of error, petition for the appeal, and by the record in this case that this cause was one wherein is involved a Federal question, to wit, a right and immunity claimed under a title and authority under the laws of the United States; it is ordered that an appeal from the United States circuit court of appeals be, and the same is hereby, allowed, and it is further ordered that the amount of security to be given by said appellant on appeal shall be, and the same is hereby, fixed at the sum of \$500, and that such security be conditioned as by law in such cases made and provided and to operate merely as security for costs and not as supersedeas.

Dated this 26th day of October, 1897.

STEPHEN J. FIELD,
One of the Justices of the Supreme Court of the United States.

(Endorsed :) Order allowing appeal to Supreme Court U. S. and fixing amount of bond. Filed Nov. 19, 1897. F. D. Monckton, clerk.

67 Know all men by these presents that we, Third Street and Suburban Railway Company, as principal, and A. M. Brookes and W. J. Grambs, as sureties, are held and firmly bound unto Meyer Lewis in the full and just sum of five hundred dollars, to be paid to the said Meyer Lewis, his certain attorney, executors, ad-

ministrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 1 day of November, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas lately, at a term of the U. S. circuit court of appeals for the 9th circuit, in a suit depending in said court between Third Street and Suburban Railway Company, appellant, and Meyer Lewis, appellee, a decree was rendered against the said Third Street and Suburban Railway Company, and the said Third Street and Suburban Railway Company having obtained appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Meyer Lewis, citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within sixty days from the date thereof:

Now, the condition of the above obligation is such that if the said Third Street and Suburban Railway Company shall prosecute its appeal to effect and answer all costs if it shall fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THIRD STREET & SUBURBAN
RAILWAY CO.,
By FRED'K BAUSMAN.
A. M. BROOKES.
W. J. GRAMBS.

[SEAL.]
[SEAL.]
[SEAL.]

68 Sealed and delivered in presence of—
FRED'K BAUSMAN.

Certified by—

C. H. HANFORD,

United States District Judge, District of Washington.

Approved by—

STEPHEN J. FIELD,

Associate Justice Supreme Court of the United States.

(Endorsed:) Bond on appeal to Supreme Court U.S. Filed Nov. 19, 1897. F. D. Monckton, clerk.

69 United States Circuit Court of Appeals for the Ninth Circuit.

THIRD STREET & SUBURBAN RAILWAY COMPANY, Appel-
lant,
v.
MEYER LEWIS, Appellee. } No. 298.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing sixty-seven (67) pages, numbered from one (1) to sixty-seven (67), both inclusive, to be a true copy of the record and of the assignment of errors and of all proceedings in the above-entitled cause, including the opinion filed, as the originals thereof remain and appear of record

in said circuit court of appeals, and that the same constitute the transcript on appeal to the Supreme Court of the United States in said cause.

Attest my hand and the seal of said United States circuit court of appeals, at San Francisco, California, this 24th day of November, A. D. 1897.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

70 UNITED STATES OF AMERICA, ss:

To Meyer Lewis, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 60 days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the United States circuit court of appeals for the ninth circuit, wherein Third Street & Suburban Railway Company is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Stephen J. Field, associate justice of the Supreme Court of the United States, this twenty-sixth day of October, in the year of our Lord one thousand eight hundred and ninety-seven.

STEPHEN J. FIELD,

Associate Justice of the Supreme Court of the United States.

71 [Endorsed:] No. 298. United States circuit court of appeals for the ninth circuit. Third Street and Suburban Railway Company, appellant, v. Meyer Lewis, appellee. Citation on appeal to Supreme Court U. S. Filed Nov. 24, 1897. F. D. Monckton, clerk U. S. circuit court of appeals, ninth circuit.

On this 24th day of November, in the year of our Lord one thousand eight hundred and ninety-seven, personally appeared before me, the subscriber, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, Meredith Sawyer, of lawful age, to wit, over the age of 21 years, and makes oath that he delivered a true copy of the within citation to Meyer Lewis, the appellee within mentioned, at No. 1000 Sutter St., in the city and county of San Francisco, California, on the 20th day of November, A. D. 1897.

Sworn to and subscribed the 24th day of November, A. D. 1897.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,

Clerk U. S. Circuit Court of Appeals, Ninth Circuit.

Endorsed on cover: Case No. 16,750. U. S. C. C. of appeals, ninth circuit. Term No., 212. Third Street and Suburban Railway Company, appellant, vs. Meyer Lewis. Filed December 15, 1897.